IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3541 OF 2006

Bharati Haribhau Pisal & Anr. .. Applicants
Versus
The State of Maharashtra .. Respondents

Mr.S.P.Kadam for applicant.
Ms.M.H.Mhatre, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 10th October 2006.

P.C.

. Mr.Kadam, after taking instructions does not press this application insofar as applicant Nos. 1 and 3 but prays time till 16th October 2006 to surrender. At the request of Mr.Kadam, time is granted to applicant Nos.1 (Bharti Haribau Pisal) and 3 (Changdeo Haribhai Pisal) to surrender before I.O. till 16th October 2006.

Ad-interim order granted by this Court to continue till then.

2. As far as applicant No.4 is concerned, it is pointed out by Mr.Kadam that she is wife of applicant No.2 and considering the role attributed to her in the incident of 15th August 2006 is that, she along with applicant No.2 has abused complainant and threatened so also she being a woman accused, a sympathetic view may be taken. As far as applicant No.s 2, 5 and 6 are concerned, Mr.Kadam submits that they are not guilty even, prima facie, of the offences alleged under the Prevention of Atrocities Act, 1989. He has invited my attention to the statement of Kamal, original complainant who is neighbour of the applicants and has contended that applicant No.6, a minor has also been named in the incident. However, it is the applicant No.1 who is supposed to have uttered the words mentioned in the complaint which, prima facie, constitute

an offence under the Atrocities Act. However, even that is doubtful, because, considering the law laid down by this Court in Sudamati w/o.Nandkumar Kade Vs. State of Maharashtra, reported in 2006 all.m.r.(Cri) 1379 and in the case of Manohar s/o.Martandrao Kulkarni & Anr. Vs. State of Maharashtra & Ors., reported in 2005 ALL MR (Cri) 2602. The principle, according to Mr.Kadam, is absolutely clear. A Full Bench of Rajasthan High Court (Virendra Singh Vs. State of Rajasthan reported in 2000 ALL M.R. (Cri) Journal 196 has also construed the provision to mean, not an absolute bar but permitting the Court to examine the accusations.

3. Learned A.P.P. submits that the offences under the Atrocities Act having been alleged, the bar under section 18 thereof would come into play and an application for anticipatory bail, is not maintainable. The remedy of the applicant is to plainly surrender and, thereafter, seek

appropriate reliefs. That apart, she submits that all basic ingredients which constitute an offence under the abovementioned provisions are satisfied and this is not a fit case for enlarging applicants on pre-arrest bail.

3. I have gone through the statement of complainant Kamal in the light of the law laid down by this Court and only with a view to satisfy myself as to whether Section 18 can be attracted qua each of the applicant accused, before me. Having read the statement in its entirety the utterances are allegedly made by applicant No.1 Bharati. As far as applicant No.2 - Sukhdev and applicant No.5 and 6 are concerned, it is prima facie clear from their utterances that same constitute an offence under the Atrocities Act, 1989. The offence alleged is under section 3(1)(x) of the Atrocities Act. That is intentionally insulting or intimidating with intent to humiliate a member of a scheduled

caste or scheduled tribe in any place within public view. Thus, if the offence is alleged to have been committed by a person not being member of the Scheduled Caste or Scheduled Tribe, he must be prima facie shown to have intentionally insulted or intimidated with an intent to humiliate a member of Scheduled Caste or Scheduled Tribe in any place within public view.

4. As far as this aspect is concerned, in the statement of the complainant, Kamal, prima facie case, against minor, Amol, Ganapati-applicant No.5 so also Sukhdev - applicant No.2 before me is not made out. Therefore, as far as they are concerned, bar under section 18 would not apply. They deserve to be enlarged on bail, in the event of their arrest in the subject C.R. As far as applicant No.4 Manisha is concerned, she has allegedly uttered the words which are mentioned in the latter part of the complaint/statement. However, as far as offence

under section 3 is concerned, it is clear that to come within the frame work of this provision it must be demonstrated, prima facie that the Act was with the intent as set out therein. It is not prima facie made out that her utterances are intentional insult as alleged. That apart, she being a woman accused and a house wife in addition to the bar under section 18, not being attracted, she deserves to be enlarged on bail in the event of her arrest as well. Hence, the following order:-

A) Application rejected insofar as applicant Nos. 1 (Bharti Haribau Pisal) and (3) Changdeo Haribhau Pisal, with liberty to surrender on 16th October 2006.

i) In the event of the arrest of the applicants in connection with C.R.No.41 of 2006 registered with Aundh Station,

the applicants Nos. 2, 4, 5 and 6 i.e. (Sukhdev Haribhai Pisal, Manisha Sukhdeo Pisal, Ganpati Krishna Pisal and Amol Sukhdeo Pisal, respectively, shall be enlarged on bail in the sum of Rs.7500/- each with one or two sureties in the like amount.

ii) The bail is granted subject to condition that the applicants will attend the Aundh police station as and when summoned.

iii) Bail is granted subject to condition that the applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the police officer/

investigating agency. The applicants shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial

v) This order will enure to the benefit of the applicants only till charge sheet is filed. Thereafter, he will be free to apply to the appropriate court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)